APPEAL NO. 010364

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 16, 2001. The hearing officer held that the appellant (claimant) injured his neck and left shoulder on _____. However, the hearing officer found that the claimant had disability from that injury for the limited period of August 7 through August 22, 2000.

The claimant has appealed the disability finding, arguing that it is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. The claimant asserts that he has been unable to obtain medical treatment largely due to the disputed claim. The respondent (carrier) responds that the hearing officer must not have found the claimant credible and that the limited disability period should be affirmed. There is no appeal of the injury finding and it has become final.

DECISION

We reverse and remand on the issue of disability.

We agree that the hearing officer erred because he appears to have required medical evidence to prove disability. The claimant had been instructed by his employer's client company to assist one of their employee's in moving his residence, which the hearing officer found was within the course and scope of his employment for (employer). He hurt his back while lifting on _____; most of the hearing was taken up over contentious and conflicting facts surrounding this incident as well as the claimant's departure from employment on August 4, 2000, which the carrier asserted was not due to the injury. The claimant testified that he was unable to work from August 4, 2000, his last day of work, until the date of the CCH. The claimant said that his pain had become worse since his injury due to a lack of treatment.

The claimant's treating doctor, Dr. E, took the claimant off work on August 7 to a follow-up appointment scheduled on August 22, 2000. The carrier disputed the claim on August 10, 2000. The claimant testified that he moved to another city because he did not have money and was unable to find a new treating doctor there due to the dispute of compensability. However, there are some limited records from a clinic in the new city showing that he was treated at various times for pain, described as severe, in the region the hearing officer found was injured. The records span September 14 through September 27, 2000, although it appears that records after the first report were to be filled out by the patient to show location and severity of pain. None of these forms provides an area for indicating work status. The evidence showed that the claimant had a previous lumbar injury for which he was certified at maximum medical improvement in May 2000 with a seven percent impairment rating.

The only indication that the hearing officer gives to explain his disability holding is in Finding of Fact No. 5:

> [The treating doctor] examined claimant on August 7, 2000, and took claimant off work until August 22, 2000 for a follow up. No other medical records indicate that claimant was off work because of the injury after August 22, 2000.

Although the carrier argues that disbelief of the claimant's testimony is implied, the hearing officer evidently believed the claimant on the more conflicting and contentious issue of whether a compensable injury occurred, when his testimony was directly refuted by other evidence. We therefore are unable to simply assume that the claimant was not believed on disability, especially when a finding of fact on disability appears to specifically require medical evidence and there is no comment on credibility. A claimant's testimony alone may establish that an injury has occurred, and that disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). The Appeals Panel has held that medical evidence is not required to establish disability. Texas Workers' Compensation Commission Appeal No. 970835, decided June 23, 1997. While we recognize that the hearing officer is not bound by a party's testimony, and may look to medical evidence to corroborate testimony, the record further indicates that the claimant's ability to obtain treatment when he moved may have been influenced by dispute of the injury. There was no medical evidence, in any case, that claimant had been released back to full duty. Although the carrier argues much about whether the claimant did, or did not, try to change his treating doctor through the Texas Workers' Compensation Commission (Commission), none of this is supported in the record and would seem to have little to do with the issue.

We remand because the hearing officer appears to have applied the wrong evidentiary standard, and the medical evidence that is in the record shows that the claimant was treated after August 22, 2000, for continued "severe" pain in the areas the hearing officer found had been injured. We therefore reverse and remand for further consideration of the evidence on disability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is

received from the Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge